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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,311

01/23/2004

Holger Lubatschowski

3968.106

8168

30448

7590

05/04/2011

AKERMAN SENTERFITT

P.O. BOX 3188

WEST PALM BEACH, FL 33402-3188

EXAMINER

FARAH, AHMED M

ART UNIT

PAPER NUMBER

3769

NOTIFICATION DATE

DELIVERY MODE

05/04/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip@akerman.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/764,311	LUBATSCHOWSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ahmed M. Farah	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 30,32-34,36-38 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) 43-52 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30,32-34,36-38,40 and 42 is/are allowed.
- 6) ☒ Claim(s) 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/04/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Claims 43-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 22, 2009.

### ***Allowable Subject Matter***

The indicated allowability of claim 41 is withdrawn in view of the newly discovered reference(s) to Berg et al. Pub. No. US 2005/0107773. Rejections based on the newly cited reference(s) follow. The examiner inadvertently reviewed the claim as dependent claim of an allowable claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 41 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bergt et al. Pub. No. US 2005/0107773.

Bert et al. disclose an ophthalmic laser system and method of use for the treatment of ocular disorders such as presbyopia, the method comprising: directing

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laser pulses to the crystalline lens of the eye to form targeted cuts in the lens to improve elasticity of the eye's lens, wherein pulse energy of the laser pulses is between 100 nJ to 100  $\mu$ J (see paragraphs [0016], [0027], [0028], and [0034]; and claims 12, 17, 22 and 26).

Bergt et al. do not specifically teach that the cut surface has an area of between 1 mm<sup>2</sup> to 10 mm<sup>2</sup>. However, the cut surface of Bergt et al. is inside the crystalline lens of the eye, which has a surface with the recited range. Note, the applicant's claim fails to clearly recite that the generated cut surface has an area of between 1-10 mm<sup>2</sup>.

### ***Allowable Subject Matter***

Claims 30, 32-34, 36-38, 40 and 42 are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Fri. between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yao Sam can be reached on (571) 272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/  
Primary Examiner, Art Unit 3769

April 25, 2011.